

(c) In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The guarantee does not encompass the participant.

(1) The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.

(2) Participation with a lender by any entity does not make that entity a holder or a lender as defined in this part.

(d) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

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PART 764—EMERGENCY FARM LOANS

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

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§ 764.1 Purpose.

The purpose of the Emergency Loan Program is to provide financial assistance to family farmers who have suffered losses as the result of a disaster so that they can return to normal farming operations as soon as possible after the disaster. Specifically, this part describes the policies and procedures of the Agency for making Emergency loans to operators of such farms.

§ 764.2 Definitions.

Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Additional security means property that provides security in excess of the amount of security value equal to the loan amount, excluding security described in § 764.8(g).

Adequate security means property that provides a security value at least equal to the loan amount.

Agency means the Farm Service Agency, including its employees, any predecessor agency, and any successor agency.

Agricultural commodity means live-stock, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other plant or animal production as determined by the Agency.

Allowable costs means those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.

Applicant means an individual or entity (including each owner of the entity unless specified otherwise) operating a farming operation at the time of the disaster, who is requesting assistance from the Agency under this part. All requirements of applicants apply to owners of the entity individually and collectively unless specified otherwise.

Aquacultural species means aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment which the applicant has exclusive rights to use.

Basic part of an applicant's total farming operation means any single agricultural commodity or livestock production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

Borrower means an individual or entity which has an outstanding obligation to the Agency under any Farm Loan Program loan, without regard to whether the loan has been accelerated. A borrower includes all parties liable

for such obligation owed to the Agency, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed; or who have been discharged of all such obligations owed to the Agency.

Chattel means any property that is not real estate.

Chattel or real estate essential to the farming operation means chattel or real estate that would be necessary for the applicant to continue operating the farm on a after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

Corporation means a private domestic entity recognized as a corporation and authorized as a corporation under the laws of the State or States in which the entity does business.

County means a local administrative subdivision of a State or similar political subdivision of the United States.

Debt forgiveness means reducing or terminating a debt under the Act in a manner that results in a loss to the Agency (excluding a consolidation, rescheduling, reamortization, or deferral), through:

(1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or

(3) Paying a loss pursuant to 7 U.S.C. 2005 on a Farm Loan Program loan guaranteed by the Agency.

Disaster means an event of unusual and adverse weather conditions, other natural phenomena, or quarantine, that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area designated by the Agency.

Disaster area means the county, declared or designated as a disaster area for Emergency loan assistance as a result of disaster related losses and counties contiguous to those counties declared or designated as disaster areas.

Disaster yield means the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.

Entity means a partnership, corporation, cooperative, joint operation, trust or limited liability company that is an operator of an operation engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.

Essential family household expenses means the expenses associated with providing food, clothing, and shelter necessary to maintain the borrower and the immediate family of the borrower.

Established farmer means a farmer who is an operator of the farming operation (in the case of a farming operation operated by an entity, its owners as a group) who:

(1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of the farming operation at the time of the disaster;

(2) Spends a substantial portion of time in carrying out the farming operation;

(3) Planted the crop, or purchased or produced the livestock on the farming operation;

(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the farming operation's projected cash flow for the next crop year or the next 12 month period, as mutually determined; and

(5) Is not:

(i) A corporation with an ownership interest of 50 percent or more held by one or more estates, trusts, other corporations, partnerships, or joint operations;

(ii) A partnership or joint operation with an ownership interest of 50 percent or more held by one of more estates, trusts, corporations, other partnerships or other joint operations;

(iii) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a

grower under contract with an integrator or processor may be considered an established farmer, provided the operation is not managed by an outside full-time manager or management service and such loans shall be based on the applicant's share of the agricultural production as contained in the contract; or

(iv) An operation that employs a full-time farm manager.

Family farm means a farm that:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(2) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(i) Pay necessary family and operating expenses;

(ii) Maintain essential chattel and real property; and

(iii) Pay debts.

(3) Is managed by:

(i) The borrower, when a loan is made to an individual.

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to an entity.

(4) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(i) The borrower and family members for a loan made to an individual.

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to an entity.

(5) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

Farm Loan Program loan means a Farm Ownership loan, Operating loan, Emergency loan, Soil and Water loan, or Economic Emergency loan made or guaranteed by the Agency pursuant to the Act.

Farmer means individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

Feasible plan means a plan based upon the applicant's records that show the

farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for an applicant to at least be able to:

(1) Pay all operating expenses and all taxes that are due during the projected farm budget period;

(2) Meet necessary payments on all debts; and

(3) Provide living expenses for family members of an individual borrower or a wage of the farm operator in the case of a entity borrower which is in accordance with the essential family needs. Family members include the individual borrower, or farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

Hazard insurance means coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builders risk, public liability, property damage, flood or mudslide, workman's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

Household contents means the essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, clothes, etc. The term excludes all luxury items including jewelry, furs, antiques, paintings, etc.

Livestock means a member of the animal kingdom, or product thereof, as determined by the Agency.

Majority interest means an ownership interest of more than 50 percent of the entity.

Non-essential asset means those assets in which the applicant has an ownership interest that do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation and are not exempt from judgment creditors or in a bankruptcy action.

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Nonfarm enterprise means any non-farm business enterprise, including recreation, that is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Normal production yield means:

(1) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Non-Insured Assistance Program for the production year during which the disaster occurred;

(2) When the actual production history is not available, the applicant's own production records for the previous three years will be used. If the applicant's production records are not available, the records of production on which FSA farm program payments are made that are contained in the applicant's farm program file, for the previous three years will be used;

(3) When the production records outlined in paragraphs (a) and (b) of this definition are not available, the county average production yield will be used.

Owner means those persons with an interest in the entity as a stockholder, partner, member, or joint operator.

Physical loss means verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

Production loss means verifiable damage or destruction with respect to annual growing crops.

Quarantine means a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

Security value means the Agency-established market value of property (less the value of any prior liens) used as security for a loan under this part as of the date of the closing of the loan.

United States means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American

Samoa, and the Commonwealth of the Northern Mariana Islands.

Working capital means cash available to conduct normal daily farming or ranching operations including, but not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent.

[67 FR 795, Jan. 8, 2002; 67 FR 7941, Feb. 21, 2002, as amended at 68 FR 7695, Feb. 18, 2003]

§ 764.3 Emergency loan funds uses.

(a) *Physical losses*—(1) *Real estate losses*. Emergency loans may be used to address the needs of the farming operation associated with physical losses of essential real estate that were the result of a disaster to:

(i) Acquire or enlarge the farm, as specified in § 1943.16(a) of this title, as long such acquisition or enlargement does not cause the farm to exceed the requirements for a family farm;

(ii) Replace or repair buildings or other structures which are essential to the ongoing viability of the operation. The Agency will finance such replacement or repair only to the extent that the structures conform to industry standards and meet the needs of the operation and intended purposes of the structure.

(iii) Pay for activities to promote soil and water conservation and protection on the family farm as specified in § 1943.16(c) of this title;

(iv) Pay loan closing costs related to acquiring, enlarging, or improving the family farm as specified in § 1943.16(d) of this title, that an applicant cannot pay from other sources;

(v) Replace land or water resources on the family farm which resources cannot be restored;

(vi) Pay costs associated with land and water development for conservation or use purposes;

(vii) Establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(viii) Replace land from the family farm that was sold or conveyed as a direct result of the disaster, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses*. Emergency loans may be used to address the needs of the farming operation associated with the